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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

FILED

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11 and all others similarly situated

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

14
15 PETER WILSON, On behalf of himself
and all others similarly situated,

16 Plaintiff,

17
18 v.

19 GATEWAY, INC., RICHARD D.
20 SNYDER, QUINCY L. ALLEN,
JANET M. CLARKE, J. EDWARD
21 COLEMAN, SCOTT GALLOWAY,
GEORGE H. KRAUSS, DOUGLAS L.
LACEY, JOSEPH G. PARHAM, JR.,
22 DAVE RUSSELL, and PAUL E.
WEAVER,

23 Defendants.

Case No. **CV09 07560 GW VBK**

CLASS ACTION COMPLAINT

1. **BREACH OF CONTRACT**
2. **BREACH OF THE
IMPLIED COVENANT OF
GOOD FAITH AND FAIR
DEALING**
3. **UNJUST ENRICHMENT**

DEMAND FOR JURY TRIAL

24
25
26 Plaintiff, by his attorneys, Meiselman, Denlea, Packman, Carton & Eberz
27 P.C., as and for his class action complaint, alleges, with personal knowledge as to
28 his own actions, and upon information and belief as to those of others, as follows:

Nature of this Case

1
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3 1. This class action seeks to redress the deceptive breach of contract and
4 breach of the covenant of good faith and fair dealing committed by Gateway, Inc.
5 (“Gateway”) and its Board of Directors in connection with its purported assignment
6 of warranties to an insolvent company in an effort to impair its customers’ ability to
7 obtain the services for which they paid considerable sums.

8 2. Gateway, once a darling of the technology sector, was a rising star in
9 the 1980s and early 1990s. However, following the “dot.com bust” in the early
10 2000s, Gateway was unable to regain its star status in the competitive computer
11 marketplace. With an eroding market share and increased liabilities, Gateway
12 needed to poise itself for acquisition to keep its brand name alive.

13 3. As a regular part of its business, Gateway aggressively marketed and
14 sold extended warranties for its computers. Gateway’s customers, believing that
15 Gateway would honor the warranty, individually paid hundreds of dollars and, in
16 the aggregate, millions of dollars for the security of knowing that their computers
17 would be repaired in the event of a malfunction.

18 4. Gateway, however, in its rush to be acquired completely disregarded
19 the expectations of its customers and assigned all the outstanding warranties from
20 its Professional Division to MPC Corporation (“MPC”), a corporation that Gateway
21 knew or should have known was on the brink of insolvency. As part of the MPC
22 deal, Gateway acquired a 19% ownership stake in MPC and made a \$10 million
23 cash infusion to MPC.

24 5. Having shed the liability of its warranty obligations through its
25 purported transfer to MPC, Gateway was well-positioned to have its more profitable
26 consumer business acquired by computer giant Acer, Inc. for more than \$700
27 million.
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1 23. Defendant Douglas L. Lacey has been a director of Gateway since
2 1989.

3 24. Defendant Joseph G. Parham, Jr. has been a director of Gateway since
4 2005.

5 25. Defendant Dave Russell has been a director of Gateway since 2007.

6 26. Defendant Paul E. Weaver has been a director of Gateway since 2006.

7 **Operative Facts**

8 ***A. Gateway Becomes One of the Country's Most Trusted Computer Brands***

9 27. Founded in 1985 in an Iowa farmhouse, Gateway founders Ted Waitt
10 and Mike Hammond successfully developed a business of direct sales of personal
11 computers ("PCs").

12 28. Gateway capitalized on its homespun, Midwestern roots by
13 implementing advertising campaigns with the tagline "Computers from Iowa?" and
14 by shipping its products in distinctive cow-patterned boxes. For several years, cows
15 featured prominently in Gateway's marketing materials and Gateway even sold dolls
16 of its cow mascot.

17 29. In 1991, *Inc.* magazine named Gateway the fastest growing private
18 company in America.

19 30. In 1993, Gateway completed an initial public offering and started
20 trading on the NASDAQ. By the mid-1990s, Gateway became a fixture on the
21 *Fortune* 500 list of the largest companies worldwide.

22 31. After relocating its headquarters to California in 1998, Gateway
23 operated three divisions: (1) the Professional Division, which sold computers to
24 educational institutions, small businesses and governmental entities; (2) the
25 Consumer Division, which focused on direct sales to consumers; and (3) the retail
26 division, which sold computers through major retailers such as Best Buy and Wal-
27 Mart. Many students purchased Gateway computers and extended warranties
28 through the Professional Division.

1 **B. Gateway's Market Share Erodes As It Struggles To Compete In the**
2 **Competitive Computer Field**

3 32. After riding high through the late 1990s, Gateway struggled in the dot-
4 com bust at the beginning of the decade.

5 33. In the early 2000s, Gateway struggled to return to profitability by
6 withdrawing from international markets, reducing retail outlets and entering into the
7 consumer electronics markets.

8 34. At the same time, the once-struggling Apple Inc. was reinvigorated
9 with the introduction of new products and services that began to erode Gateway's
10 market share.

11 35. Moreover, Gateway's expansion into the consumer electronics
12 marketplace saw only mild success and the company withdrew from that market
13 segment in 2004.

14 36. Struggling to compete against these market forces, Gateway determined
15 to focus its energies on maximizing the profit potential for its consumer businesses
16 and attracting an acquirer. The problem: Gateway's Professional Division and its
17 warranty liability of \$60 million.

18 37. On August 27, 2007, Gateway announced that it was "considering"
19 selling its Professional Division, which would help Gateway streamline expenses by
20 \$130-150 million annually. Later that same day, Gateway announced its consumer
21 divisions were being acquired by Acer, Inc., the Taiwan-based technology giant.
22 The acquisition by Acer, which was valued at \$710 million, did not include
23 Gateway's Professional Division.

24 38. Desperate to shed its Professional Division in an effort to complete the
25 Acer acquisition, Gateway turned to Idaho-based MPC Corporation. *Within a mere*
26 *week*, on September 4, 2007, Gateway trumpeted a deal with MPC in which MPC
27 agreed to acquire Gateway's Professional Division for \$90 million. As part of the
28 MPC deal, Gateway acquired a 19.9% stake in MPC and infused \$10 million in cash

1 into MPC. Expressly included as part of the MPC deal was that MPC would assume
2 Gateway's warranty obligations to its Professional Division customers, a liability
3 estimated at \$60 million. Discovery will reveal that Gateway's \$10 million
4 investment was the pay-off to MPC for assuming liabilities that MPC never
5 intended to honor.

6 39. Gateway, which as part of the MPC deal acquired a major stake in
7 MPC, knew or should have known that MPC was not able to shoulder the burden of
8 Gateway's warranties. At the time the Professional Division sale was announced,
9 MPC itself was on the brink of insolvency. Indeed, MPC's Form 10-Q for the
10 period ended September 30, 2007 -- the quarter in which the acquisition of
11 Gateway's Professional Division was announced -- which was publicly filed with
12 the United States Securities and Exchange Commission warned:

13 *[T]here can be no assurance that we will be able to continue in the*
14 *ordinary course of business due to our significant liquidity*
15 *constraints, unprofitable operations and negative operating cash*
16 *flows. . . .*

17 We face liquidity constraints

18 We may need to raise a significant amount of additional funds to satisfy
19 vendor payment obligations and to fund our business if our losses
20 continue. There can be no assurance that we will be able to secure
21 additional sources of financing. Even if we do obtain additional
22 funding, the amount of such funding may not be sufficient to fully
23 address all of our liquidity constraints, which could negatively and
24 materially impact our business and results of operations.

25 40. Despite these dire public warnings, in its desperation to rid itself of
26 liabilities and increase its attractiveness to Acer, Gateway ignored altogether the
27 interests of its customers who spent good money for warranties. Thus, Gateway
28

1 assigned its warranty obligations knowing that the assignment to MPC materially
2 impaired the customers' ability to obtain performance on a warranty claim.

3 41. Immediately upon the close of the MPC deal in October 2007, Gateway
4 disclaimed any liability for warranty obligations for its Professional Division
5 customers and referred them to MPC. MPC, however, was never financially or
6 otherwise able to assume the warranty obligations.

7 42. In fact, the risk to Gateway's warranty holders was immediately
8 apparent. In MPC's Form 10-K for the period ended December 31, 2007 identified
9 several "risk factors" to its business including, "Gateway's warranty and other
10 obligations assumed by us may exceed those contemplated at the time of the
11 acquisition." Specifically, MPC's Form 10-K reported:

12 In connection with our acquisition of [Gateway's] Professional
13 Business, we assumed all of the warranty obligations and other
14 obligations . . . of the Professional Business. The amount of the
15 assumed obligations and timing of related cash flows to fund such
16 obligations may differ from our estimates and could adversely impact
17 our limited ability to fund these obligations and adversely impact our
18 relationships with customers and suppliers.

19 MPC also reported that Gateway had become the largest holder of MPC's common
20 stock and, as such, "is able to exercise significant influence over matters subject to
21 shareholder approval."

22 ***C. The Gateway Acquisition Pushes MPC Into Insolvency***

23 43. Within just a few months of acquiring Gateway's Professional
24 Division, MPC's liquidity problems reached a crisis stage. On May 8, 2008, the
25 American Stock Exchange ("AMEX") notified MPC that it failed to satisfy a
26 continued listing rule. Specifically, MPS had stockholder equity of less than \$2
27 million and sustained losses in two of its three most recent fiscal years.
28

1 44. Although the AMEX accepted MPC's plan to regain compliance with
2 its listing standards, MPC was given a deadline of November 9, 2008 to comply.

3 45. MPC, however, could not regain compliance with the exchange's
4 listing standards. On October 27, 2008, MPC announced that the NYSE Alternext
5 US LLC (which acquired AMEX on October 1, 2008) intended to file a delisting
6 application with the Securities and Exchange Commission striking MPC's common
7 stock and warrants from the exchange. On November 4, 2008, MPC was delisted
8 from the NYSE Alternext as a resulted of its sustained losses.

9 46. MPC admitted that it appeared "questionable as to whether we will be
10 able to continue operations." Gateway, despite its significant equity stake in MPC,
11 did nothing to stave off MPC's inevitable bankruptcy petition.

12 47. With this final blow, MPC could no longer function. On November 6,
13 2008, MPC filed a voluntary petition for bankruptcy pursuant to Chapter 11 of the
14 United States Bankruptcy Code in the United States District Court for the District of
15 Delaware. In a statement concerning its bankruptcy filing, MPC's chief executive
16 officer attributed MPC's extensive losses to "unforeseen issues surrounding our
17 integration of the Gateway Professional business unit"

18 48. By December 29, 2008, MPC announced that it would liquidate all of
19 its remaining assets and close its doors. Unfortunately for the Gateway warranty
20 holders, there would be no recourse on any warranty claims.

21 49. Gateway, meanwhile, persisted in its refusal to offer any reprieve to
22 those Professional Division customers who had warranty claims.

23 ***D. Plaintiff Peter Wilson Purchases A Gateway Computer With A Now-
24 Worthless Extended Warranty***

25 50. On July 20, 2005, Plaintiff Peter Wilson, a resident of Big Bear,
26 California, as a freshman student at Master's College, located in Santa Clarita,
27 California, purchased a Gateway computer, M250-E Laptop, serial number
28 0035612802, along with a 4 year extended warranty. Plaintiff purchased the
Gateway Extended Service Plan, Priority Access, Accidental Damage and Limited

1 Warranty Plan (collectively, "Gateway Extended Warranty Agreement"). The total
2 purchase price was \$1,475, plus \$121.69 in sales tax. The total purchase price was
3 added to his Master's College billing statement, which Plaintiff paid in full.
4 Plaintiff never had the ability to negotiate the terms of use of the Extended Warranty
5 Agreement.

6 51. On or about February 6, 2009, with approximately one year remaining
7 until Plaintiff's Gateway Extended Warranty Agreement terminated, Plaintiff's
8 Gateway laptop ceased functioning completely and was in need of repair. Plaintiff
9 contacted Gateway directly at this time to exercise his Gateway Extended Warranty
10 Agreement and have Gateway honor its agreement to repair Plaintiff's computer.

11 52. Upon contacting Gateway, Plaintiff was informed by a Gateway
12 representative that, due the recent acquisition of Gateway professional products, all
13 service and support for Plaintiff's computer was now being handled by MPC.
14 Plaintiff then contacted MPC, only to find out that MPC was out of business and
15 could not service Plaintiff's computer. Plaintiff contacted Gateway directly for a
16 second time to complain that, after paying approximately \$1,000 for a Gateway
17 Extended Warranty and with more than one year remaining until the Extended
18 Warranty terminated, Plaintiff was entitled to have his laptop computer warranty
19 honored by Gateway. Gateway refused, and directed him again to MPC, informing
20 Plaintiff that it was no longer responsible to warrant his computer as it had sold
21 Plaintiff's warranty to MPC, a bankrupt corporation. As such, Plaintiff's Gateway
22 Extended Warranty is worthless, and Plaintiff has suffered damage.

23 ***E. Thousands of Customers Have Been Damaged As A Result of Gateway's***
24 ***Deception***

25 53. Thousands of customers like Peter Wilson have suffered as a result of
26 Gateway's deception. Web sites are full of complaints from individuals and small
27 business owners left with worthless warranties. *Infoworld* and other technology
28 publications have reported consumer grievances over the worthlessness of Gateway

1 warranties. Numerous complaints have been submitted to the Better Business
2 Bureau and state attorney generals.

3 54. Unfortunately, many of the individuals suffering from Gateway's
4 deception are students who acquired their computers through the Professional
5 Division, because that unit serviced educational institutions. In addition to
6 pecuniary losses, Gateway's refusal to honor its warranties has negatively impacted
7 the studies of students throughout the nation.

8 **Class Action Allegations**

9 55. Plaintiff brings this action on his own behalf and additionally, pursuant
10 to Rule 23 of the Federal Rules of Civil Procedure, on behalf of a nationwide class
11 of all persons who have purchased an extended warranty from Gateway's
12 Professional Division whose warranty, in turn, was sold to MPC Corporation during
13 the period from January 1, 2005, to the present (the "Class").

14 56. Excluded from the Class are Defendants; any parent, subsidiary, or
15 affiliate of Defendants; any entity in which Defendants have or had a controlling
16 interest, or which Defendants otherwise control or controlled; and any officer,
17 director, employee, legal representative, predecessor, successor, or assignee of
18 Defendants.

19 57. This action is brought as a class action for the following reasons:

20 a. The Class consists of at least thousands of persons and is
21 therefore so numerous that joinder of all members, whether otherwise required or
22 permitted, is impracticable;

23 b. There are questions of law or fact common to the Class that
24 predominate over any questions affecting only individual members, including:

25 i. whether Defendants violated contractual warranties by
26 purporting to assign its warranty obligations to an insolvent corporation for the
27 purpose of materially impairing Plaintiff's and other class members ability to obtain
28 the performance for which they had paid substantial sums.

1 ii. whether Defendants violated the covenant of good faith
2 and fair dealing applicable to all contracts;

3 iii. whether Defendants unjustly enriched themselves by
4 selling its warranty obligations and eviscerating its customers' ability to use
5 warranty services;

6 iv. whether members of the Class have sustained damages
7 and/or other compensable losses and, if so, the proper measure thereof; and

8 c. The claims asserted by Plaintiff are typical of the claims of the
9 members of the Class;

10 d. Plaintiff will fairly and adequately protect the interests of the
11 Class, and Plaintiff has retained attorneys experienced in class and complex
12 litigation, including related litigation involving contracts and consumer fraud;

13 e. A class action is superior to other available methods for the fair
14 and efficient adjudication of the controversy, for at least the following reasons:

15 i. Absent a class action, Class members as a practical matter
16 will be unable to obtain redress, Defendants' violations of its legal obligations will
17 continue without remedy, additional customers will be harmed, and Defendants will
18 continue to retain their ill-gotten gains;

19 ii. It would be a substantial hardship for most individual
20 members of the Class if they were forced to prosecute individual actions;

21 iii. When the liability of Defendants has been adjudicated, the
22 Court will be able to determine the claims of all members of the Class;

23 iv. A class action will permit an orderly and expeditious
24 administration of Class claims, foster economies of time, effort, and expense and
25 ensure uniformity of decisions; and

26 v. The lawsuit presents no difficulties that would impede its
27 management by the Court as a class action.

28

1 f. Defendants have acted on grounds generally applicable to Class
2 members, making class-wide relief appropriate; and

3 g. The prosecution of separate actions by individual members of the
4 Class would create a risk of incompatible standards of conduct for Defendants and
5 of inconsistent or varying adjudications for all parties.

6 58. Defendants' violations of the common law are applicable to all
7 members of the Class.

8 **FIRST CAUSE OF ACTION**

9 **(Breach of Contract)**

10 59. Plaintiff repeats and realleges the allegations contained in Paragraphs 1
11 through 58 above as if fully set forth herein.

12 60. Plaintiff and other class members purchased warranties from Gateway
13 with the justified expectation that Gateway would honor its obligations under the
14 warranties to offer repair and replacement services. To obtain the benefit of the
15 warranties, Plaintiff and other class members paid substantial sums.

16 61. When entering into the contract for warranty services, Plaintiff and
17 other class members had no ability to negotiate the warranty's terms. The terms of
18 the warranty unreasonably favored Gateway and eviscerated several of Plaintiff and
19 the class member's rights without adequate notice.

20 62. Plaintiff and the class members have fulfilled their obligation under the
21 warranty contract by paying for the warranty protection.

22 63. Despite the full performance by Plaintiffs and other class members,
23 Gateway, with the full knowledge and approval of its Board of Directors, assigned
24 the warranties to MPC, a corporation that Defendants knew or should have known
25 was on the brink of insolvency and, in fact, became insolvent.

26 64. Gateway's purported assignment of its warranty obligations to MPC is
27 ineffective as a matter of law because the assignment materially impaired the
28 warranty holders' ability to obtain performance on the contract.

1 65. Gateway's refusal to honor its warranty obligations is a material breach
2 of contract, which has resulted in harm to Plaintiffs and other class members who
3 cannot obtain the benefit of their bargain.

4 66. By reason of the foregoing, Defendants have breached the parties'
5 contract and is liable to Plaintiff and the other members of the Class.

6 **SECOND CAUSE OF ACTION**

7 **(Breach of the Covenant of Good Faith and Fair Dealing)**

8 67. Plaintiff repeats and realleges the allegations contained in Paragraphs 1
9 through 66 above as if fully set forth herein.

10 68. As a direct and proximate result of Defendants' actions as described
11 herein, Plaintiff and the Class have suffered, and continue to suffer, injury in fact
12 and have lost money as a result of Defendants' deception.

13 69. Plaintiff and other class members purchased Extended Warranty
14 protection with the expectation that Gateway would honor its obligations
15 throughout the warranty period.

16 70. Gateway, however, with the full knowledge and consent of its Board of
17 Directors, assigned the warranty to a corporation that Defendants knew or should
18 have known was insolvent.

19 71. Thus, Defendants assigned the warranties when it knew or should have
20 known that it was materially impairing the ability of Plaintiff and other class
21 members to obtain the performance for which they contracted. As such, Plaintiff
22 and other class members have not obtained the benefit of their bargain from
23 Gateway and the essential purpose of the warranty contract has been frustrated.

24 72. By reason of the foregoing, Defendants have breached the covenant of
25 good faith and fair dealing and are liable to Plaintiff and the other members of the
26 Class.

THIRD CAUSE OF ACTION

(Unjust Enrichment)

73. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 72 above as if fully set forth herein.

74. Plaintiff and the Class have conferred benefits on Defendants by paying value for extended warranties that they expected Defendants to honor throughout the warranty's term.

75. Defendants knowingly and willingly accepted monetary benefits from Plaintiff and the Class, although Defendants did not honor its warranty obligations. Rather, Defendants profited from the sales of warranties which it then sold to an insolvent company only to leave the Plaintiff and the Class with a worthless warranty.

76. Under the circumstances described herein, it is inequitable for Defendants to retain the full monetary benefit at the expenses of Plaintiff and the Class.

77. By engaging in the conduct described above, Defendants have been unjustly enriched at the expense of Plaintiff and the Class and is required, in equity and good conscience, to compensate Plaintiff and the Class for harm suffered as a result of Defendants' actions.

78. As a direct and proximate result of Defendants' unjust enrichment, Plaintiff and the Class have suffered injury and are entitled to reimbursement, restitution, and disgorgement from Defendants of the benefit conferred by Plaintiff and the Class.

WHEREFORE, Plaintiffs respectfully requests that the Court enter judgment against Defendant as follows:

1. Certifying this action as a class action, pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, with a class as defined above;

2. On Plaintiff's First Cause of Action, awarding Plaintiff and the Class all appropriate remedies, including but not limited to damages as well as consequential and incidental damages;

3. On Plaintiff's Second Cause of Action, awarding Plaintiff and the Class all appropriate remedies, including but not limited to damages as well as consequential and incidental damages;

4. On Plaintiff's Third Cause of Action, awarding Plaintiff and the Class all appropriate remedies, including but not limited to reimbursement, restitution, and disgorgement of all profits unjustly retained by Defendant;

5. Awarding Plaintiff's and the Class' interest, costs and attorneys' fees; and

6. Awarding Plaintiff and the Class such other and further relief as this Court deems just and proper.

DATED: October 16, 2009

Respectfully submitted,

MEISELMAN, DENLEA, PACKMAN,
CARTON & EBERZ P.C.
JEFFREY I. CARTON
JEROME NOLL

By 
JEFFREY I. CARTON
Attorneys for Plaintiffs

CALDWELL LESLIE & PROCTOR, PC
ROBYN C. CROWTHER
MATTHEW W. O'BRIEN

By 
ROBYN C. CROWTHER
Attorneys for Plaintiffs

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury.

DATED: October 16, 2009

Respectfully submitted,

MEISELMAN, DENLEA, PACKMAN,
CARTON & EBERZ P.C.
JEFFREY I. CARTON
JEROME NOLL

By Jeffrey I. Carton
JEFFREY I. CARTON
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MATTHEW W. O'BRIEN

By Robyn C. Crowther
ROBYN C. CROWTHER
Attorneys for Plaintiffs

COPY

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

PETER WILSON, On behalf of himself
and all others similarly situated,

PLAINTIFF(S)

V.

GATEWAY, INC., RICHARD D. SNYDER, QUINCY L. ALLEN, JANET
M. CLARKE, J. EDWARD COLEMAN, SCOTT GALLOWAY, GEORGE H.
KRAUS, DOUGLAS L. LACEY, JOSEPH G. PARHAM, JR., DAVE
RUSSELL, and PAUL E. WEAVER

DEFENDANT(S).

CASE NUMBER

CV09 07560 GW VBKx

SUMMONS

TO: DEFENDANT(S): _____

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Robyn C. Crowther, whose address is 1000 Wilshire Blvd., Suite 600, Los Angeles, Ca. 90017. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: OCT 16 2009

By: _____

CHRISTOPHER POWERS
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

COPYUNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**I (a) PLAINTIFFS** (Check box if you are representing yourself ☐)PETER WILSON, On behalf of himself
and all others similarly situated**DEFENDANTS**GATEWAY, INC., RICHARD D. SNYDER, QUINCY L. ALLEN, JANET M.
CLARKE, J. EDWARD COLEMAN, SCOTT GALLOWAY, GEORGE H.
KRAUSS, DOUGLAS L. LACEY, JOSEPH G. PARHAM, JR.,
DAVE RUSSELL, and PAUL E. WEAVER
Attorneys (if known)**(b) Attorneys** (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)Robyn C. Crowther
CALDWELL LESLIE & PROCTOR, PC
1000 Wilshire Blvd., Suite 600
Los Angeles, Ca. 90017
P: (213) 629-9040; F: (213) 629-9022**II. BASIS OF JURISDICTION** (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)**CLASS ACTION** under F.R.C.P. 23: ☒ Yes ☐ No**MONEY DEMANDED IN COMPLAINT:** \$ _____**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)29 U.S.C. § 1332(d) Diversity of Citizenship
Cause of Actions 1) Breach of Contract; 2) Breach of the Covenant of Good Faith and Fair Dealing; 3) Unjust Enrichment**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL PROPERTY	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	FORFEITURE/PENALTY	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input checked="" type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 630 Liquor Laws	SOCIAL SECURITY
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923) (405(g))
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	IMMIGRATION	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 465 Other Immigration Actions			FEDERAL TAX SUITS
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

- ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Robyn C. Crowther
 Robyn C. Crowther

Date October 16, 2009

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge George H. Wu and the assigned discovery Magistrate Judge is Victor B. Kenton.

The case number on all documents filed with the Court should read as follows:

CV09 - 7560 GW (VBKx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

===== :
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.